

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

SCOTT AND RHONDA BURNETT,	)	
RYAN HENDRICKSON, JEROD BREIT,	)	
SCOTT TRUPIANO, JEREMY KEEL,	)	
HOLLEE ELLIS, and FRANCES HARVEY,	)	
on behalf of themselves and all others	)	
similarly situated,	)	
	)	No: 4:19-cv-00332-SRB
Plaintiffs,	)	
	)	
v.	)	Judge Stephen R. Bough
	)	
THE NATIONAL ASSOCIATION OF	)	
REALTORS, REALOGY HOLDINGS	)	
CORP., HOMESERVICES OF AMERICA,	)	
INC., BHH AFFILIATES, LLC, HSF	)	
AFFILIATES, LLC, RE/MAX, LLC, and	)	
KELLER WILLIAMS REALTY, INC.,	)	
	)	
Defendants.		

**THE HOMESERVICES DEFENDANTS’  
MOTION TO STAY PENDING FAA APPEAL**

COME NOW Defendants HomeServices of America, Inc; BHH Affiliates, LLC; and HSF Affiliates, LLC (together, the “HomeServices Defendants”) and respectfully move this Court to stay the claims of any plaintiffs or unnamed class members who executed a Listing Agreement with a subsidiary of the HomeServices Defendants pending resolution of the HomeServices Defendants’ appeal.<sup>1</sup> The Motion is brought pursuant to Fed. R. App. P. 8(a), 28 U.S.C. § 1292, the Court’s inherent authority, and

---

<sup>1</sup> The HomeServices Defendants exclude the claims of the Burnetts from their stay request.

the Court's prior precedent, including, but not limited to, *Morgan v. Ferrellgas, Inc.*, No. 4:19-cv-00910-SRB, 2020 U.S. Dist. LEXIS 20245 (W.D. Mo. Feb. 6, 2020) and *Sitzer v. Nat'l Ass'n of Realtors*, No. 4:19-cv-00332-SRB, 2020 U.S. Dist. LEXIS 248309 (W.D. Mo. May 8, 2020). The HomeServices Defendants incorporate by inference the Suggestions in Support of this Motion as if they were set out at length herein and further state and show as follows:

1. On April 22, 2022, this Court granted Plaintiffs' motion for class certification. Doc. 741. This action brought the unnamed class members before the Court. *See Gutierrez v. Wells Fargo Bank, NA*, 889 F.3d 1230 (11th Cir. 2018). The HomeServices Defendants moved to compel the unnamed HomeServices-related class members to arbitration nine business days later. Doc. 757. The Court denied this motion to compel arbitration, Doc. 843, and the HomeServices Defendants have noticed their appeal of this order under the Federal Arbitration Act. Doc. 877.

2. In this case, the Court has previously issued a stay pending an FAA appeal as follows: staying "claims of any . . . plaintiffs or putative class members who executed a Listing Agreement with a subsidiary of HomeServices Defendants . . . pending resolution of HomeServices Defendants' appeal." *Sitzer v. Nat'l Ass'n of Realtors*, No. 4:19-cv-00332-SRB, 2020 U.S. Dist. LEXIS 248309, at \*13 (W.D. Mo. May 8, 2020).

3. The HomeServices Defendants hereby move this Court to issue the same stay pending resolution of their new FAA appeal.

4. Full argument in support of a stay is included in the Suggestions in Support filed concurrently with this motion, which the HomeServices Defendants restate and incorporate herein by reference.

REQUESTED RELIEF: the HomeServices Defendants respectfully request that the Court stay the claims of any plaintiff or unnamed class member who executed a Listing Agreement with a subsidiary of HomeServices Defendants pending resolution of HomeServices Defendants' appeal.

Dated: August 8, 2022

/s/Robert D. MacGill

Robert D. MacGill, *pro hac vice*

Matthew T. Ciulla, *pro hac vice*

Scott E. Murray, *pro hac vice*

Robert.MacGill@MacGillLaw.com

Matthew.Ciulla@MacGillLaw.com

MACGILL PC

156 E. Market St.

Suite 1200

Indianapolis, IN 46204

(317) 721-1253

Jay N. Varon, *pro hac vice*

Jennifer M. Keas, *pro hac vice*

jvaron@foley.com

jkeas@foley.com

FOLEY & LARDNER LLP

3000 K Street NW, Suite 600

Washington, DC 20007

(202) 672-5300

Brian C. Fries  
bfries@lathropgage.com  
LATHROP GAGE LLP - KCMO  
2345 Grand Avenue, Suite 2200  
Kansas City, MO 64108-2618  
(816) 292-2000

*Counsel for Defendants*  
*HomeServices of America, Inc., BHH*  
*Affiliates, LLC, and HSF Affiliates,*  
*LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon all counsel of record by virtue of the Court's CM/ECF system on August 8, 2022.

/s/Matthew T. Ciulla

One of HomeServices of America, Inc.'s Attorneys